

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES FOR THE USE AND
 BENEFIT OF AGATE STEEL, INC.,

Plaintiff(s),

vs.

JAYNES CORPORATION, et al.,

Defendant(s).

Case No. 2:13-cv-01907-APG-NJK

ORDER DENYING EMERGENCY
 MOTION TO STAY
 (Docket No. 52)

ORDER DENYING AS MOOT
 MOTION FOR LEAVE TO FILE A
 SUR-REPLY
 (Docket No. 57)

Pending before the Court is Defendants' motion to stay, which they filed on an emergency basis. Docket No. 52. The Court set an expedited briefing schedule. Docket No. 53. Third-Party Defendants American Steel Corporation and The Ohio Casualty Insurance Company filed a response in opposition. Docket No. 54. Plaintiff also filed a response in opposition. Docket No. 55. Defendants filed a reply. Docket No. 56. The Court finds this matter properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed below, the motion is hereby **DENIED**.

Courts have inherent power to stay the cases before them as a matter of controlling their own docket and calendar. *See Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936); *see also Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110-13 (9th Cir. 2005) (reviewing Ninth Circuit law on issue, and finding a stay was inappropriate). The court may find a stay to be appropriate pending resolution of another independent proceeding when the resolution of that proceeding may bear upon the instant case. *See, e.g., Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979). The movant bears the burden of showing that a stay is warranted. *See Clinton v. Jones*, 520 U.S. 681, 708 (1997).

Defendants have not shown that a stay is appropriate here. Defendants argue that this case should be stayed based on their bare-bones description of administrative proceedings against the Army

Corps of Engineers. Although their motion fails to set forth any meaningful information regarding the stage at which those administrative proceedings are currently, the reply acknowledges that they are in their infancy. *See* Docket No. 56 at 9. Indeed, Defendants have not yet even submitted the request for final determination, setting out the objections to the liquidated damages assessment. *See id.* The Ninth Circuit has made clear that “[a] stay should not be granted unless it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to the court.” *Leyva*, 593 F.2d at 864. That showing has not been made here and, instead, the only information provided is that the administrative proceedings are in their infancy. This shortcoming alone warrants denial of the motion to stay. *See, e.g., Russell Road Food & Beverage, LLC v. Galam*, 2014 WL 3105034, *2 (D. Nev. July 7, 2014) (overruling objection to magistrate judge’s order).

Nor does the Court find Defendants’ other arguments persuasive. For example, Defendants make much of the existence of a contract provision that they argue precludes American Steel from opposing the pending request for a stay. *See, e.g.,* Docket No. 52 at 7. Even assuming *arguendo* that this contract clause applies, a point that is disputed in the briefing, it does not and could not dictate the outcome of the pending motion. It is ultimately for the Court to decide whether a stay should be entered, even if the parties were to stipulate to such a stay. *See, e.g.,* Local Rule 7-1(b) (stipulations interfering with the schedule adopted by the Court are ineffective absent Court approval). For the reasons discussed above, the Court finds that a stay would be improper and nothing in the cited contract provision alters that conclusion.

Accordingly, Defendants’ emergency motion to stay is hereby **DENIED**.

Moreover, in light of the disposition above, Plaintiff’s motion for leave to file a sur-reply (Docket No. 57) is hereby **DENIED** as moot.

IT IS SO ORDERED.

DATED: August 29, 2014



NANCY J. KOPPE
United States Magistrate Judge